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# THE PENTAGON PAPERS--AND FREEDOM OF THE PRESS

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Last June, the Supreme Court blocked the government's attempt to suppress the printing (by the *New York Times* and *Washington Post*, followed by several other newspapers) of a secret Pentagon study of U.S. involvement in the Vietnam war. Though the landmark legal battle was thus resolved, the fundamental issues involved are still cause for reflection and concern. Perhaps no commentary has been more thought-provoking than the following editorial, written by the editor of the *Detroit News* and published three days before the Supreme Court decision.

**W**E do not believe that the *New York Times* and the other involved newspapers acted responsibly and in the national interest when, without trying to use established procedures for declassification of secret papers, they chose to publish an edited version of what it now appears was an incomplete account of U.S. involvement in the Vietnam war. Despite our devotion to, and dependence upon, the rights guaranteed under the First Amendment, we do not accept the premise that the doctrine of a free press is an unrestricted license to print any secret document, the publication of which, in an individual editor's opinion, would be in the national interest.

Our brief includes these points:

First, carried to its logical conclusion, the *Times* theory would permit publication of any government secret—the design of a Polaris missile, contingency war plans, intelligence reports on enemy war preparations—provided only that the editor believed that such publication would be in the national interest. Such a conclusion, we feel, would result in a disastrous collision between press freedom and the manifest democratic need for orderly government.

Granted, the bureaucratic tendency to cover mistakes with a "top secret" stamp is a problem. It always has been, and newspapers have an obligation to fight it. But the solution does not lie in a grant to an individual—he editor, scientist or

public official—of power to substitute his personal definition of national interest as a basis for declassification.\* To argue otherwise is to accept the thesis of defenders of Klaus Fuchs that his betrayal of Anglo-American atomic secrets was justified by his sincere conviction that a better world would result from their delivery by him to the Soviet Union.

Newspapers which have published the Vietnam war papers protest that the Justice Department sought to establish a precedent of prior restraint upon newspaper publication. Is this true? Forgetting national defense, is it not accepted that both state and federal judges use "prior restraint" to protect their own secrets? Would any of the judges to whom the *Times* appealed have listened for a minute to a contention that a newspaper which acquired a transcript of a grand-jury investigation of organized crime had a right to publish it on the ground that Mafia operations constitute a national problem concerning which the

\*For an alternative solution, see the comments by ex-Secretary of State Dean Acheson in Press Section, pages 16 and 18.

public has a "right to know"? We and the *Times* know that the offending editor would be chastised for contempt of long-recognized pre-publication restraints.

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But, it is contended, publication did not harm national security. Is this true? Secretary of State William Rogers has noted serious diplomatic problems: What government is going to freely exchange views with us if it suspects the correspondence will be published? And even if the newspapers publishing the Pentagon documents did not so intend, prospects are that the already obdurate Hanoi negotiators may feel that revelation of alleged U.S. "immorality" will so stir American protest as to force President Nixon to surrender now. Certainly if a negotiated peace is in our interest, none of the recent events have helped our bargainers get one.

In summary, we do not want freedom of press, so important to our existence, stretched to justify this type of irresponsibility. We do not defend the proposition that any person with access to classified material has a right to leak it for publication in the name of national interest.